Secrt. II—48—21,640—19-1-17.

P.W. (1917) Department.

Mis. SERIES.

G.O. No. 250-I

DATED 22-6-17

Rec 28/08/21

Indexed

[Despatch Abstract.]

Suit

Sanctioning, with remarks, the defence of the suit filed against Govt. in O.S. No. 66 of 1917 on the file of the Dt. Munsiff's Court, Melur, Madura Dt. for damages caused by a P.W.D. Contractor in carrying out repairs to the Chettikulam Tank.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

CURRENT FILE.

Post Box No.
Madras, S.E.

R.F. XXII-A.—17.

PUBLIC WORKS DEPT. IRRIGATION
Madras.
14 JUN 1917
No. 4034/17-A
GOVERNMENT OF MADRAS

REVENUE BOARD OFFICE, MADRAS.

Proceedings of the Board of Revenue

Mis.No.1304, dated 12th June 1917

The Hon.Mr.Ll.E.Buckley,

Commr.of Rev.Sett., Sur.,L.R.and Agri.

----

p.2 cf

Read letter from the Collector of Madura, R.O.C.No.1047, dated 2nd June 1917.

Resolution

Transferred to the Chief Engineer for Irrigation for favour of disposal. The Revenue Department is not concerned with the subject matter of the suit.

(True Extract)

[signature]

For Ag.Secretary.

To the Chief Engineer for Irrigation with copies of plaint, draft written statement, Sub Divisional Officer's letter No.537, dated 25-4-17, Executive Engineer's letter No.1137 M, dated 29-5-17 and with Collr.'s R.Dis.414/Rev.dated 11-10-16, two measurement books, a sketch, petition to Executive Engineer dated 12-6-16, a tender form (K-2) for piece work and a statement of dates of plaint, hearing &c in original.
Copy to the Collr.of Madura.

KO
12-6-17

191 .

Board of Revenue

MADRAS.

To

The Chief Engineer for Irrigation

Mis. No. 1304, dated 12-6-1917.

Subject.

Suit.-

Transferring to the Chief Engineer for Irrigation for favour of disposal letter from the Collr. of Madura requesting sanction for the defence of O.S. No. 66 of 17, on the file of the District Munsiff Melur at Madura (damages for excavation of earth for closing breaches in the bund of Chettikulam tank).

R.F.D 81.—18-9-11.

Madura Collector's Office

Dated the 2nd June 1917

R.O.C. No.1047 Gl. of 17

From

G.F.Paddison Esq, M.A., I.C.S.,

Collector of Madura.

To

The SECRETARY TO THE COMMISSIONERS OF LAND REVENUE,

Madras.

Sir,

In forwarding herewith a copy of the plaint in O.S.No.66 of 17 on the file of the Dt. Munsif's Court, Melur, at Madura in which the Secretary of State for India in Council is the 1st Defendant, I have the honour to state as follows:-

2. The suit is for the recovery of Rs.180 being the amount of damages caused to the plaintiff by the removal of earth from his lands by the defendants.

3. Chettikulam otherwise called Vedathakulam tank breached in 1916. Owing to this breach the plaintiff's suit land in rear of the breach became silted up. The D.P.W. took steps to close the breach and the work was given to the 2nd defendant under piece work agreement. This agreement which was drawn in form K 2 does not specify the place from which earth should have been taken to close the breach. But the 2nd defendant, it is said ----- removed the earth from the land in question with plaintiff's consent and in fact at his request on the understanding that he was to be remunerated by the plaintiff for the extra cost involved in taking more earth than was provided for in the estimate in order that the silt might

might be removed and the land rendered again fit for cultivation. On 12-6-16 the plaintiff however put in a petition to the Executive Engineer Madura Division stating that pits had been dug in his land without his consent and requesting that further digging of pits should be stopped and that the pits already dug might be levelled. Thereon the Executive Engineer on 22-6-16 issued an order to the Sub Divisional Officer stating that no more pits should be dug on the plaintiff's land without his consent. As the pits already dug were not levelled, the plaintiff gave a notice of suit which was recorded in this office R.Dis. 414 of 1916 dated 11-10-16 on the ground that his claim for damages lay against the second defendant who dug pits in his lands. Hence, the suit under reference.

4. The allegations in the plaint are dealt with in detail in the Assistant Engineer's report No. 537 E dated 25-4-17 copy of which is hereon enclosed.

5. The first Defendant is not a necessary party to the suit as the digging of pits in the plaintiff's land and removal of earth thereon were done by the second defendant on his own responsibility. The plaintiff's allegation that the damage to his land was caused by the second defendant at the instance of the first defendant is not correct as the agreement does not specify the plaintiff's suit land as the place from which earth to close the breach should be removed. Further the Assistant Engineer reports that after receipt of the petition of the plaintiff pits were not dug in his land. A copy of the Executive Engineer's report No. 1137/M dated 29-5-17 is also enclosed.

6. The draft written statement prepared by the local Government Pleader and slightly modified by me in accordance with the suggestion of the Executive Engineer is herewith submitted. The Government Pleader says that the suit can be defended with success.

Proceedings of the Board of Revenue, Rev.Sett. Mis.No.1304
dated 12th June 1917.

Read letter from the Collector of Madura R.O.C.No.1047 d/2-6-17.

Resolution.

Transferred to the Chief Engineer for Irrigation for favour of disposal. The Revenue Department is not concerned wit the subject matter of the suit.

(True Extract)

S. Krishnamachari,
for Secretary.

To the Chief Engineer for Irrigation with copies of plaint, draft written statement, Sub Divisional Officer's letter No.537 dated 25-4-17, Executive Engineer's letter No.1137 M, dated 29-5-17 and with Collr's R.Dis.414/Rev. dated 11-10-16 two measurement books, a sketch, petition to Executive Engineer dated 12-6-16, a tender form (K-2) for piece work and a statement of dates of plaint, hearing etc. in original.

Copy to the Collector of Madura.

Copy of letter from the Collector of Madura, No.R.O.C.1047 Gl. of 17 dated 2nd June 1917 :--

In forwarding herewith a copy of the plaint in O.S. No. 66 of 17 on the file of the Dt. Munsiff's Court Melur, at Madura in which the Secretary of State for India in Council is the 1st Defendant, I have the honour to state as follows :--

2. The suit is for the recovery of Rs 180 being the amount of damages caused to the plaintiff by the removal of earth from his lands by the defendants.

3. Chettikulam otherwise called Vedathakulam tank breached in 1916. Owing to this breach the plaintiff's suit land in rear of the breach became silted up. The D.P.W. took steps to close the breach and the work was given to the 2nd defendant under piece work agreement. This agreement which was drawn in form K 2 does not specify the place from which earth should have been taken to close the breach. But the 2nd defendant, it is said removed earth from the land in question with plaintiff's consent and in fact at his request on the understanding that he was to be remunerated by the plaintiff for the extra cost involved in taking more earth than was pro-

vided for in the estimate in order that the silt might be removed and the land rendered again fit for cultivation. On 12-6-16 the plaintiff however put in a petition to the Executive Engineer, Madura Division stating that pits had been dug in his land without his consent and requesting that further digging of pits should be stopped and that the pits already dug might be levelled. Thereon the Executive Engineer on 22-6-16 issued an order to the Sub Divisional Officer stating that no more pits should be dug on the plaintiff's land without his consent. As the pits already dug were not levelled the plaintiff gave a notice of suit which was recorded in this office R.Dis.414 of 16 d/- 11-10-16 on the ground that his claim for damages lay against the second defendant who dug pits in his lands. Hence, the suit under reference.

4. The allegations in the plaint are dealt with in detail in the Assistant Engineer's report No. 537-E dated 25-4-17 copy of which is herein enclosed.

5. The first defendant is not a necessary party to the suit as the digging of pits in the plaintiff's land and removal of earth thereon were done by the second defendant on his own responsibility. The plaintiff's allegation that the damage to his land was caused by the second defendant at the instance of the first defendant is not correct as the agreement does not specify the plaintiff's suit land as the place from which earth to close the breach should be removed. Further the Assistant Engineer reports that after receipt of the petition of the plaintiff pits were not dug in his land. A copy of the Executive Engineer's report No. 1137 M., dated 29-5-17 is also enclosed.

6. The draft written statement prepared by the local Government Pleader and slightly modified by me in accordance with the suggestion of the Executive Engineer is herewith submitted. The Government Pleader says that the suit can be defended with success.

7. The list of documents to be filed and of the witne[sses] to be examined is given in the report of the Assistant Engineer referred to in para 4 supra. Letter No. 798 E. dated 1-7-16 of the Assistant Engineer need not be filed for if it is filed it will support the plaintiff's allegations in paras 5 and 8 of the plaints and will be prejudicia[l] to the interests of Government. Hence the word subsequent correspondence in para 12 (1) of the Assistant Engineer's report may be omitted.

8. This office R.Dis. No. 414 of 16 dated 11-10-16 and other connected records are herewith submitted.

9. The usual statement of dates is also submitted. The Government Pleader has been asked to obtain a short adjournment if the Board's sanction for the defence of the suit is not received before the date of hearing.

Plaint.

In the Court of the District Munsiff of Madura

At Madura

Original Suit No. of 1917

Kailasa Kone .. Plaintiff

And :--

The Secretary of State for India in Council through the District Collector of Madura
2. Muthukaruppa Kone .. } Defendants.

Plaint presented by the plaintiff above - named under Order VII, Rule 1 of the C.P.C.

1. Address of the Plaintiff :--

Kailasa Kone, son of Sokkanada Kone, Yadava caste cultivation, aged about 40, residing at Jari Veerapandi village, Madura Taluk.

The address for service of all notices and processes to the plaintiff is as above.

The Secretary of State for India in Council through the Collector of Madura.

(2) Muthukaruppa Kone, father's name not known, contractor aged about 40, residing at Anaiyur, Madura Taluk.

3. The Nanja land described in the schedule hereunder and lying within the jurisdiction of this court belongs to the joint family consisting of the plaintiff and his undivided brother's son of which family plantiff is the Manager.

4. The Chettykulam tank next west to the suit Nanja which belongs to the Government having been breached, the Government about 1916 took steps through its Public Works Department to close the said breach. The 2nd defendant was the contractor who undertook and did the work of closing up the said breach under the direct immediate and close supervision of the officials of the said department.

5. That with a view to effecting the said repair, the said contractor and the said officers of the Public Works Dept. have most unlawfully and without any consent or authority on the part of the plaintiff dug about huge pits of varying sizes from ½ to 1 yard deep all through the said land. Even during the course of the said operations my client petitioned on 12-6-16 to stop the same but in vain; and the said wrongful acts were persisted into the extreme end.

6. Owing to the said unlawful and wrongful acts, the said wet land has been damaged a great deal and rendered unfit for cultivation. My client was in consequence unable to cultivate the land this year; and further before the land can ever be fit for cultivation, the whole has to be levelled, fresh and good soil has to be brought in, the level raised and the whole surface top dressed etc.

7. The defendants 1 and 2 are responsible for the said loss of cultivation for 1916 and also for the cost of repairing and restoring the land to its original condition. The plaintiff estimates that he would have obtained deducting all charges and cultivation expenses 10 kalams of paddy at Rs 8/- per kalam or Rs 80/-. In respect of the cost of repair even though the total cost will amount to Rs 150/- the plaint will rest

content with a decree for Rs 100/- in respect thereof.

8. The 1st defendant as also liable in respect of the said wrongful acts in as much as they were not merely authorised by the 1st defendant through his officers but were done by the officers of the Public Works Department in the ordinary and usual course of business and for its benefit -- but were as a matter of fact adopted and ratified by and on behalf of the defendant.

9. Registered notice was sent to the 1st defendant under Section 80 of the Civil Procedure as also to the 2nd defendant but to no effect except to the extent of eliciting a wholly false reply notice from the 2nd defendant.

10. This suit has therefore been brought to recover from the defendants damages amounting to Rs 180/- in respect of their wrongful acts in respect of the suit land.

11. The cause of action for this suit arose about May and June 1916 when the 1st defendant's officers and 2nd defendant committed the unlawful acts complained.

12. The plaintiff values this suit for Court fees and jurisdiction at Rs 180/-.

13. WHEREFORE the plaintiff humbly prays that this Honourable Court may be pleased to decree that the defendants do pay the plaintiff the sum of Rs 180/- with subsequent interest and costs of suit.

I do hereby solemnly affirm that the facts stated in paragraphs 1 to 13 are personally known to me and are true save in so far as they are stated to be on information and belief and these I believe to be true.

* * * * * *

In the Court of the Dt. Munsiff of Melur at Madura.

O.S. No. 66/17

Between :--

Kailasa Kone .. Plaintiff

and

The Secretary of State for India in Council thro' the District Collector of Madura and another } Defendants.

Written statement of the aforesaid 1st defendant underOrder 8, Rule 1, C.P. Code :--

1. This defendant does not admit any of the allegations in the plaint except those herein expressly admitted by him and puts the plaintiff to the proof of such of those allegations as he relies on in support of his case.

II. The plaintiff has no cause of action against this defendant. This defendant is not a necessary party to the duit and the suit is not sustainable against him.

III. The repairs to the plaint-mentioned tank were not done by this defendant, departmentally through his subordinates or servants but were done by the 2nd defendant under piece work agreement entered into with him. This defendant is not therefore in any way responsible for the alleged wrongful acts of the said 2nd defendant or for the alleged damages caused to the plaintiff in consequence of the said wrongful acts. This defendant's officers did not do any of the alleged wrongful acts nor were they done in the ordinary and usual course of business as stated in the plaint. The said acts were also not authorised, ratified or adopted by this defendant's subordinates or servants. All the allegations contrary to this in the plaint, paras 5,7 and 8 are not true or correct.

IV. This defendant understands that the 2nd defendant dug pits in the plaintiff's land and removed earth therefrom at the plaintiff's request on a stipulated remuneration as the plaintiff desired to lower the level of his land which had beem silted up to a height of 9 inches to 1 foot and that the plaintiff himself was removing earth from his land with the

the aforesaid object. The plaintiff did not complain of the acts of the 2nd defendant though they commenced from the beginning of May, till 12-6-16. No pits were dug in the plaintiff's land subsequent to 17-6-16. Further all the pits in the plaintiff's land are not from ½ yard to 1 yard deep as stated in the plaint. Most of them are only ½ yard or less than ½ yard deep and the bottom levels of the pits dug by the 2nd defendant are not very much lower than those dug by the plaintiff himself. All allegations contrary to this in para 5 of the plaint are not true or correct.

V. The allegations in para 6 of the plaint are not correct. The alleged digging of the pits by the 2nd defendant did not render the land unfit for cultivation. The area covered by the said pits would be only about 30 cents. The plaintiff could have levelled it up at a slight cost and cultivated the land if he were inclined to do so. It is not necessary to bring in any fresh soil or raise the level of the land for making it fit for cultivation as stated in the plaint.

VI. This defendant is not responsible as stated above for any damages claimed by the plaintiff in para 7 of the plaint. Further the amount claimed as damages is excessive. The alleged loss of cultivation would not exceed Rs 25/- and compensation if any for removal of earth from the plaintiff's land at the approved rate current will not exceed Rs 12/-.

WHEREFORE it is prayed that this Hon'ble Court may be pleased to dismiss the plaintiff's suit as against this defendant with costs and render justice.

Copy of letter No.537-E dated 25-4-1917 from M.R.Ry S.Krisl samy Ayyar Avl.,B.A.,B.E.,Asst.Engr.Periyar Sub Dn.to the Ex.Eng Madura Dn.--

Subject.- O.S.No.66 of 1917 in the Court of the District Munsiff ~~Court~~, Melur.

With reference to your No.1258 S dated 19-3-1917,herewith re turned I have the honour to submit herewith a tracing showing -- Vadathakulam tank or Settikulam tank and the plot under reference with the position of the pits and their levels marked thereon,and to report as follows on the several allegations in the plaint.

2. <u>Para 4 of the plaint.</u> The statements made herewith are correct and call for no remarks.

3. <u>Para 5 of plaint</u>. As already reported in Nos.798 E d/1-7-16 and 1009 E,dated 24-8-1916,the contractor(2nd Defendent)says that h entered upon the plaintiff's land for digging pits only with the consent of the plaintiff and in fact at his request on the underst ing that he was to be remunerated by the plaintiff for the extra cost involved in taking earth from the plaintiff's land to the bund instead of from the bed of the tank. The plaintiff's land had been very much silted as a result of the breach in the bund of the Vadathakulam tank closely and ~~by~~ the plaintiff was interested in getting it lowered. There is,~~however~~ therefore,every reason to believe that the plaintiff asked the 2nd Defendent or at least gave him permission to remove earth from his field. Otherwise,there was no reason why the 2nd Defendent should have gone and removed earth from the plaintiff's land on his own responsibility involving greater leand and lift than provided for in the estimate when he could have easily ~~got~~ got the earth from the tank bed itself at a much less cost. The - total quantity of earth excavated for closing the breach is 44,712 c.ft. <u>vide</u> page 15 of Measurement book No.58 A.M.D. Of this quantity the greater portion <u>viz</u>.29296 c.ft. was removed from the bed of the tank and the balance 15416 c.ft.from wet fields in rear <u>vide</u> details of measurement on pages 25 to 30 of Measurement book No.33 A and pages 2 to 3 of measurement book No.58 A.M.D. Of this latter only 11927 c.ft.were removed from the suit land under reference, 349 c.ft from the field to the south of it and 3,140 c.ft.from the field to

north
he ~~south~~ of it. It will also be seen from the entries in the surement book that all the pits complained of in the suit land been dug prior to 15-6-1916, when they weremeasured, and all pits ~~subsequently~~ subsequently were either dug in the field to the north the suit land or in the bed of the tank. Removal of earth from field in rear of bund was stopped after 17-6-1916 when I first spected the work.

The statement in the plaint that removal of earth from the suit and was persisted in even after the plaintiff petitioned on 12-6-1916 s wrong as no earth was removed from petitioner's land after 15-6-16 as stated above. The exact date of the petition and the date in which it was received in the Division office may be ascertained from the original petition filed in the division office. The petition was actually received by me on 24-6-1916 with your No.2480 S dated 23-6-1916 and the plaintiff complained to me for the first time only 17-6-1916 when I accidentally met him on the tank ~~bs~~ bund. Sub Overseer Madura says that he never received any complaint from the plaintiff although the pits were dug in the suit land from the beginning of May and the fact that he did not petition till 12-6-1916 (correct date to be ascertained from the original petition) is clear evidence that he had agreed or at least had no objection to the removal of earth from his land till then.

The statement that huge pits from ½ to one yard deep had been dug is not quite correct. It will be seen from the measurements recorded on pages 27-29 of M.B.No.33-A that almost all the pits except 4 wereonly ½ yard deep and less and only one pit 12' x 12' was 2½ feet deep. Further on the date of my inspection 17-6-1916, the plaintiff was either removing himself or permitting the removal of earth from the suit land under reference to some other fields as indicated in the sketch. This clearly shows that he was interested in lowering his land which is about 9 inches to one foot higher than the fields to the each and south of it ~~with~~ as will be seen from the levels noted in the sketch. Further the levels show that the bottom levels of the pits dug by the 1st 2nd Defendent are not very much lower than that of the pit dug by the plaintiff.

4. Para 6 of the plaint. As stated above pits were dug in petitioner's land only at his own request and he could easily have cultivated his land if he had the intention to do so by lowering the rest of the field

a ~~little and partly filling in the~~

a little and partly filling up the pits dug by the 2nd defendent and levelling the whole up by ploughing as was done by the owner of the field to the north of the suit land where nearly 3140 c.ft. of earth were removed. Itis therefore wrong to say that the land was rendered unfit for cultivation by the digging of pits although it involves some expenditure on the plaintiff's part to level the land.

No fresh soil is necessary and the level of the land need not be raised. It will be sufficient if the land is levelled up to say +42.00 which (is) the average level of the surrounding lands.

5. <u>Para 7 of the plaint</u>. As stated above, the Government is not responsible for any loss of crop or cost of repairing the land. But even assuming it to be so, the plaintiff's claim for damages is - extravagant. The actual extent of land occupied by the pits and - thereby rendered unfit for cultivation measures only 190'x 90' (or nearly 30 cents and there is no reason why the plaintiff should not have cultivated the remaining extent of land lying to the east of this portion. The plaintiff can therefore, claim damage for loss of crop only on the extent of 30 cents which will be only about 25 Rs at the utmost and not Rs80 as claimed by the plaintiff. As regards the cost of repairing the land, I have already stated that only 1192? c.ft.were removed from the plaintiff's land and that it could be ver easilylevelled up by lowering the eastern portion of the land to 42.00 and filling up the pits with this earth, no earth from outside being necessary. The actual quantity of earthwork involved in doing this will be about half the quantity of earth removed from the field or say 6000 c.ft.or 6 units. The cost of it will be at the ut-most about Rs4 per unit or say Rs24. or 25 against Rs100 claimed by the plaintiff. The actual cost is likely to be much less than Rs25 a earth has to be removed only for a very short depth and shoved i the pits close by. Usually in such cases when earth has to be remov from patta lands and it is objected to by the pattadar compensation the rate of Re.1 per 1000 c.ft.is paid for the earth so removed. Ac cording to this, the plaintiff if at all he is entitled to any com-pensation, is entitled to only Rs12 and nothing more.

Para 8 of th[illegible] the 1st Defendent is not at all liable in respect of the alleged wrongful acts in as much as they were never authorised by him through any of his officers as alleged in the plaint. As a matter of fact, the instructions of the overseer and sub-overseer who were in immediate charge of the work to the 2ned defendent were, that he should remove earth only from thebed of the tank. The 2nd Defendent entered on petitioner's lands of his accord and removed earth therefrom after apparently coming to an understanding with the plaintiff, as stated above, and represented to the sub-overseer, that he had obtained the permission of the plaintiff to remove earth from his field as it did not matter, whether the earth was removed from the bed of the tank or from the field in rear, and as the plaintiff did not complain at all about the removal of earth ~~afxea~~ from the field until 12-6-16 although he had been to the spot several times before that date, while the earth was being removed no notice was taken of it, until plaintiff's complaint was actually received, when further removal of earth from plaintiff's land was immediately stopped, as already explained above. It will thus be seen that the first defendent is not at all liable in respect of any of the alleged wrongful acts complained of.

Para 9 of the plaint. The suit notice was recorded by the Collector vide correspondence ending with your No.4300-S dated 18-10-16 (vide Madura Collector's No.R Dis.414 Rev.of 1916 dated 11-10-16).

Paras 10 to 13. For the reasons stated above, the plaintiff is not at all entitled to any damage and even if he is entitled to any, he is entitled to only Rs 42 as explained above.

To sup up the following should briefly be our contentions against the suit viz.-

(1) that the first defendent is not liable in respect of any of the wrongful acts alleged in the plaint in as much as they were not authorised by him or any of his officers and were stopped immediately they were objected to by the plaintiff.

(2) that even assuming he is liable, the suit land was entered upon for removing earth by the 2nd defendent only with the consent if not at the request of the plaintiff who was interested in getting the land lowered, that the plaintiff did not complain about the removal of the earth until 12-6-1916 although he knew that the earth was being removed from the field from the beginning of May and that the further

removal of earth from the suit land was stopped as soon as the -- plaintiff's complaint was received.

(3) that the suit land has not been damaged to any appreciable extent by the removal of the earth, and could easily have been cultivated if only the plaintiff had taken the trouble to level it up (the same if not greater trouble he should have taken in clearing his land of the sand and silt deposited by the breach in the tank bund and in levelling it up even if the pits had not been dug.) and (4) that the plaintiff is not, therefore entitled to any damages and even if he is, he entitled to only Rs12 for 11927 c.ft. removed from his field at Re.1 per 1000 c.ft. which is the usual compensation paid in this division for removing earth from patta wet lands.

10. The evidence to be adduced on behalf of Government in support of the above contentions has already been clearly indicated in the detailed report on each of the allegations in the plaint.

11. As regards the list of witnesses to be examined, I believe the following officers of the department will have to be examined.

(1) M.R.Ry E.A. Ambasankara Ayyar Avl., SUB Overseer, Madura
(2) " K.R. Ganapathy Ayyar Avl. overseer No.1 section, Andipatty
(3) " S.Krishnaswamy Ayyar Avl., B.A.B.E., Asst. Engineer.

The following persons who actually excavated the pits in the suit land may be cited as the witnesses to prove that the plaintiff did not object to the removal of earth from his field although he had actually been to the site many times when the earth was being removed.

(1) Padinettanpadiyan son of Karuppan of Virapandy village, Madura post
(2) Pandigu son of Elangan of Silaneri village, Samayanallur post
(3) Palaniandi son of Sengiambalam of Anaiyur village -do-
(4) Malayandi -do-
(5) Mariyasouri son of not known of Elumbur village hamlet of Kulamangalam -do-
(6) Irulappa Kone son of Karuppa Kone of Vadathakulam village, Madura

The understanding between the 2nd defendent and the plaintiff that the former may remove earth from the suit land and that he was to be paid some remuneration for extra lead and lift involved in taking earth from the field instead of from the tank-bed appears to be oral and no satisfactory evidence can be adduced in support thereof. However the 2nd defendent has been asked to produce necessary evidence in support of this contention.

12. As regards the list of documents to be filed, the following may be filed.

(1) The original petition of the plaintiff sent to me with your No.2480 S dated 23-6-1916 and subsequent correspondence on the subject if necessary.

(2) Statement of the 2nd defendent forwarded with my No.1009 E dated24-8-16 stating that he entered on the suit land only at the request of the plaintiff. (Already sent to Collector with Madura Dn. Executive Engineer's No.2023 M dated 7-9-16).

(3) M.B.Nos.33A and 58 A.M.D.in which the measurements referred to in my No.detailed report are recorded and

~~(4) M.B.Nos.33 A and 58 A.M.D in which the measurements referred to in my No.detailed~~

(4) The sketch (tracing) showing the land under reference and the pits with levels (herewith submitted)

No.96 W M dated 9-5-1917.

Copy forwarded to the Collector of Madura with reference to his No.R.O.C.1047/Gl.of 17 dated 8-3-17 and 1-5-17.

The following documents are herewith sent for reference and return.

(1) Original petition dated 12-6-1916

(2) Measurement book Nos.33 A and 58 A.M.D.

(3) One tracing showing the lands under reference.

(4) Plaint copy.

(Sd) P. Kasi Viswalingam 2.5.17
For Collector

Madura Collector's Office
Dated 2nd June 1917

Copy of communication No.1137 M dated 29-5-1917 from the Executive Engineer, Madura division to the Collector of Madura.

I have the honour to return herewith duly verified the written statement received with your R.O.C.No.1047 G1/17 dated 25-5-1917.

Para III. The words "but were done on contract by the 2nd defendent" may be omitted and the following substituted "but were done by the 2nd defendent under piece agreement entered into with him" on behalf of the 1st defendent. This is suggested as the word "contract" is applied only to schedule contract i.e. to work done under an agreement in K.1 form. The piece work agreement are in K2 form. The actual agreement entered into with the 2nd defendent was on K2 form and is herewith for information and favour of return. It will be seen that the agreement is only for the payment for a certain kind of work In the case of earthwork, there is nothing stipulated regarding the place from which earth should be taken. As long as the earth is of approved quality, there is no objection to allowing a Piece-worker to bring it from wherever he likes. Usually the site for pits is marked out by our officers but this is mainly due to ensure that the proper quality of earth is dug up and taken and that false pits are not made. As far as I am aware there is nothing to prevent us from allowing a piece-worker to bring earth from wherever he likes provided the earth is of good quality and that no excess rate on account of bringing it from a longer distance is claimed.

Para V. The words "or to level the land to any appreciable extent" may I think be omitted and the following substituted "or to raise the level of the land".

Para VI It does not appear to be correct to say "the cost of repairing the land would not alose exceed Rs 12". From the Asst. Engr's report it will be seen that the cost of cutting earth and levelling up the land may come to R. 24/ Rs 12 referred to by the Asst. Engr. is the amount of compensation worked out for 11927 c.ft. of earth removed at the approved rate current in this division viz. Re.1 per 1000 c.ft. of earth removed from patta wet lands. The last

sentence may therefore be ~~xxxxxxxxxxxxxxx~~ suitably altered.

I am also of opinion that the letter of the Asst.Engr.No.798 E dated 1-7-16 may give an impression contrary to what is being sought to be maintained, about this matter of putting in pits in the land of the plaintiff. I believe it might have been written before the Asst.Engr.knew the full facts of the case. He might at the time of writing have been under the impression that pits were dug in the Plaintiff's land under the orders of the sub_overseer. That letter need not I think be filed now. I am calling for a further ~~xxxxxxxxxxxxxxxxxxxxxx~~ report from the Asst.Engr. about it and shall send a further reply if necessary.

As for our stopping the putting in of any more pits in the Plaintiffs land after 17-6-16 I presume it must have been done as the officers are anxious to prevent all causes of friction. Even though they may be only between other people if even indirectly it may be possible to do so .

(Sd) P. Kasiviswalingam
For Collector.

Madura Collector's Office
Dated 2-6-17

Form A. Defence of Suits.

Date of the plaint	Date of service of the Summons on the Collector	Date of Collector's letter	Date of hearing	Explanation for delay where a clear fortnight is not allowed to the Board for the consideration of the case.
1	2	3	4	5
22-2-17	4-3-17	1-6-17	8-6-17	The Executive Engineer who was called on 5.3.17 to report on the allegations in the plaint submitted his report after two reminders on 9.5.17. The Govt. Pleader was then asked to state whether the suit can be defended with success & if so to forward a draft written statement. His reply was received on 24.5.17. The Ex: Engr. had then to be consulted on certain allegations made in the written statement. His reply was received on 30.5.17. Hence the delay the Govt. Pleader has been asked to obtain a short adjournment.

(Co) P. Kasi Viswalingam
1.6.17
For Collector
of ~~[illegible]~~ Madura.

NOTES.

Chettikulam tank suit. O.S. No. 66 of 17 on the file of the Dt Munsif's Court Melur, Madura Dt.

From the Board of Revenue Rev Sett No. 1304 Mis dated 12th June 17

UNDER SECY. TO GOVT. 18 JUN 1917 REVENUE DEPT

D.I.

The facts of the case are fully explained in the Collector's letter R.C. No. 1047 Gl dated 2nd instant. The Local Govt Pleader is of opinion that the suit can be defended with success and the draft written statement prepared by him has been slightly modified by the Collector. The procedure to be adopted in the conduct of suits is given in the annexure to G.O. No. 553 W Confdl dated 25th April 1911 as modified by G.O. No. 308 W dated 23rd February 1916.

2. As for the list of documents to be filed the Collector considers in para 7 of his letter that the Asstt Engineer's letter No. 798 E dated 1.7.16 should not be filed, as it may support the plaintiff. The Govt may agree with him.

3. The suit stood posted for hearing on the 8th instant, but the Collector has asked the Govt Pleader to obtain a short adjournment.

4. A draft order sanctioning the defence of the suit and approving the draft written statement is put up and may be sent to Revenue for acceptance before issue.

16.6.17 16.6.17 18/6/17 18/6/17

REVENUE-W 10129 Recd 18.6.17

P. W. D. IRRIGATION. U. O. No. 4024/17 A-1 Dated 18-6-1917

Rev. a.o.

Scott. II—8 (a)—160,004—16-1-17.

NOTES.

Rev. Depᵗ.

To Under Secretary

The draft written statement at pages 8-9 C.F. calls for no remarks. The draft order may be accepted in this department and the file returned to P.W.D. (I).

18.6.17

19.6.17

19.6.17

P.W.D. I. No

D.S.

P.W.D. (I)

PUBLIC WORKS DEPT., IRRIGATION
Ootacamund.
19 JUN 1917
No. 4024/17-I
GOVERNMENT OF MADRAS.

The draft order may now issue.

19.6.17

Issue. 20/6/17

Sectt. II—10 (b)—2-15.

P.W. DEPARTMENT. (3).

Suit

Suit.
Contracts & Contracts

[illegible]ctioning with remarks the defence of the suit filed against Govt. in O.S. No. 66 of 1917 on the file of the Dt. munsif's Court, Melur, Madura Dt. for damages caused by a P.W.D. Contractor in carrying out the repairs of the Chettikulam tank

READ AGAIN G.O. No. ......, dated ...... 191 .

" " " ......, " ...... 191 .

READ ALSO:—

C. No. 4024/17-A, From the Board (R.S.) mis, No. 1304, dated 12.6. 1917

" " ......, " " ......, " ......, " ...... 191 .

" " ......, " " ......, " ......, " ...... 191 .

ORDER.

No. 250.I, dated 22.6. 1917.

Mis.

The defence at public expense of O.S No. 66 of 1917 on the file of the Dt. Munsiff's court, Melur, is sanctioned and the draft written statement approved.

2. The Govt agree with the Collr. that the Asstt. Engineer's letter No. 798 E dated 1.7.16 should not be filed in Court.

3. The result of the suit should, in due course, be reported for the information of Government

16.6.17 16.6.17 18/6/17 18/6/17

Para 3: Reply received & recorded in G.O. 4072 of 1-10-17.

p. 9 on Collr's file Flag (x)

DESPATCHED
Date 23/6/17
Enclos. as in page 1 c/f

To the Supg Engineer VI Circle with encls. (as given in P.S. on P. 1 c/f)
Copy to the Collr of Madura.
A.G. Madras

Ex. Please keep in file copies of pp. 2-19 c/f [illegible] 22/6

given for copying *copied* ________ *examined* ________ *signed* ________ } 191 .							
AGAIN G.O. No. . DATED 191 .							
...RRENT No.							
ENCLOSURES TO ... No.							
ORDER OF GOVERNMENT	A	A	A	A	A	A	A
LETTER OF GOVERNMENT.							
STATEMENT WITH DITTO.							
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.							

N.B.—

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.